

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. A, Suite 172
June 17, 2011 , 9:00 a.m.

1. Call Board Meeting to Order:
Mr. Smyth called the board meeting to order at 9:03 a.m. on June 17, 2011. All board members were present. Guests next introduced themselves. Mr. Smyth advised that continuing education is given for attending the board meeting and a sign-in sheet is available for signature.
2. Floor Open to Public Comments:
Mr. Strong addressed the past "Legislative Session" and asked people to get involved. Mr. Diggs, Mr. Grogan, and Mr. Walters addressed degree requirement issues. Mr. Bowles addressed online complaint system. Mr. Gillis addressed board licensing examination issues and GPS systems.
3. Introduction of New and Re-appointed Board Members:
Mr. Smyth introduced the new board members Jerry Garcia from Corpus Christi and Mary Chruszczak from The Woodlands. He also advised those present of Mr. Paul Kwan's re-appointment to the board.
4. Service awards:
Mr. Smyth presented awards to both Mr. Doug Turner and Mr. Tony Trevino for their service to the board. Mr. Turner was present. However, Mr. Trevino could not make the meeting and his award will be sent to him.
5. Board Committee Assignments:
Committee assignments will be made at the next board meeting.
6. Approval of March Board Meeting Minutes:
Mr. Price moved to approve the March minutes as submitted. Mrs. Foster seconded the motion. All were in favor (9 to 0) to approve the March 11, 2011 board meeting minutes.
7. Approval of April Board Meeting Minutes:
Mr. Price moved to approve the April minutes as submitted. Mr. Hodde seconded the motion. All were in favor (9 to 0) to approve the April 13, 2011 board meeting minutes.
8. Director's Report:
 - A) Discussion over Legislature events.
Mr. DiTucci advised that this past Legislature Session had several merger bills brought about by state budget issues and the next Session should be just as difficult. Mr. DiTucci thanked everyone for their support during this past Session, especially those unseen persons. Mr. DiTucci also advised that the agency received the funds asked for in the Legislative Appropriation Request (LAR) and \$3,000 more for computers. Next Session we will try to get a .5 time FTE.

B) Letter of appreciation to agency staff.

Mr. DiTucci advised that he was new and had to deal with Session. However, it was not unnoticed the times that Mrs. Hodgson and Mrs. Evans went out of their way to assist him. The agency and the profession benefited and that this letter of appreciation was a token of appreciation for their efforts.

C) Budget Report 2011/Budget 2012/13, House Bill 4 Reductions.

Mr. DiTucci advised that financially we will make the year. He asked that those examination committees that have not put in their expenses do so. There are 2 more committee meetings to come and that will be reviewed as well. The board could have its next meeting in September and that would also help this years' budget. Mr. DiTucci advised that with the passing of HB4 it authorized both 5% reductions and a 2.5% additional reduction. This has caused our short fall. There may be some funds that were to be used as maintenance fees for our computer system, however, that system has not gone up yet and those fees may still be in our budget. There is a high dollar program that the agency once had and we would like to get. Because we don't have that software program it causes the staff about 6 days a year of extra work. Purchasing that program would help. Additionally this past Session has limited us on retention of funds from collection of continuing education monies.

D) Continuing Education audit letter mailed June 6, 2011.

Mr. DiTucci advised the board the continuing education audits have been sent out and they have a copy of that letter.

E) SIT results posted within 14 Days of receipt, Sec. 1071.257.

Mr. DiTucci advised that because of Statutes SIT results will be posted within 14 days. However, the certification of those grades will not occur until the board meets and licenses will be held back until that time.

F) Policy on Expert Testimony.

Mr. Boyt advised that surveyors are expected to provide expert testimony and there is supposed to be an RPLS and an LSLs on the board. Mr. Boyt went on to say that if a board member is aware of a conflict they should recuse themselves and notify the Executive Director or Investigator. Mr. O'Hara asked if this involves all board members. Mr. Boyt said it did. This item was then postponed until the next board meeting.

G) Policy on Continuing Education Committee Chair to determine questionable issues.

Mr. DiTucci advised that sometimes individuals may obtain some continuing education that may be borderline or questionable. In those cases the chair of the continuing education committee will make the decision. Mr. Kwan will have something on that for the next board meeting.

H) New numbering system for SIT and LSLs.

Mr. DiTucci advised the new Versa computer system will record SITs and LSLs. The SITs will start with 11 and the LSLs with 22. This is new for us. It goes well with the Firms and RPLS but the changes noted had to occur for the systems operation.

I) 4 Year Rule review process.

Mr. DiTucci advised the board of a statute requiring rule review every 4 years. He went on to say this rule review allows the board to refresh themselves with the rules to see if the rules still apply. Mr. Smyth wants to bring this item back to the next board meeting.

J) Notice letters mailed March 14, 2011 on expired Firm registration.

Mr. DiTucci advised he was made aware of 98 Firms of approximately 1400 that didn't have an active surveyor listed. The letter mailed to those Firms was included in the presentation of this topic.

K) Upcoming LAR and the need for an additional .5 FTE to aid with the Complaints/Investigations process.

Mr. DiTucci advised that with the next Legislative Appropriation Request (LAR) the agency would be looking to add additional investigative help in the form of a .5 time or full time FTE (Full time equivalent). He went on to say "Firms" have shown to be a challenge. Mr. Gilley agreed and enlightened the board. He also included how the engineering and architect board are proactive while we are reactive. Mr. DiTucci advised that with the additional help not only would we be able to keep up with the firms, we could also be proactive. We could do both. Additionally if one investigator gets conflicted out of a case the other could take the case and we could keep moving forward. Mr. Gilley added that in the future when he retires the board would then have another trained investigator to continue. Mr. DiTucci went on to advise the board that at the next board meeting licensing fees will be discussed and should the board want to lay a foundation down to show the Legislature they can generate the monies for the additional FTE they could do so by increasing the Firm registration fee a little.

A break was called at 9:59 am. The board was back in session at 10:25am. All board members present prior to the break still present.

9. Complaints- Garey Gilley, Investigator.

A) Discuss working complaints.

Mr. Gilley advised most of the complaints are in the working process and have not been taken to the complaint review panel.

11-02 Deals with setting vs finding iron rod.

11-09 A company website advised they did survey work. The company was contacted and they made changes to their site. They took it down.

11-11 This complaint has not been reviewed by the complaint panel. There are no rule violations. The complaint deals with a title conflict.

11-21 This complaint has not been reviewed by the complaint panel.

11-26 Deals with a disagreement between 2 surveyors. This was reviewed by the complaint panel and dismissed.

11-32 This complaint has not been reviewed by the complaint panel.

11-38 This has not been reviewed by the complaint panel. Possible rule violation 663.10(7), 663.16(a), 663.19(4) and 663.19(7). Case 09-47 waiting SOAH is against the same surveyor.

B) Informal Settlement Conference.

10-33 The surveyor signed the agreed order and reprimand was accepted. Mr. Smyth is conflicted out of this. Mr. Hodde next took over the meeting. The order will need to be signed by the Vice Chair if the board accepts. Mr. Kwan motioned to accept the settlement and signing by the Vice Chair. Mrs. Chruszczak seconded the motion to accept surveyor's signed Agreed Order and Reprimand. All were in favor to settle this case.

C) Investigation Panel

None

D) Dismiss complaints as frivolous or not within Board's authority

11-03 No rule violation found. Surveyor asks this to be dismissed as frivolous. Mr. Gilley advised the board of the issues in this case. The board voted all in favor to dismiss as frivolous.

11-29 No rule violation. Issue between buyer and financing. Elevation and 100 year flood plain were given. Surveyor asked to dismiss this as frivolous. The board voted all in favor to dismiss case as frivolous.

11-31 This case was filed against a surveyor that had nothing to do with the complainant's case. The board voted all in favor to dismiss the complaint against the surveyor as frivolous.

11-35 This case deals with a court order and the settlement of a land dispute. Later one party was not satisfied with the outcome. There are no rule violations. The board voted all in favor to dismiss this complaint as frivolous.

E) Flow Chart of Investigation/Complaint Process

Mr. DiTucci advised that the flow chart is presently not available. He went on to say he felt that Mr. Gilley may have taken it to Dallas by accident. Mr. DiTucci advised he'd have one later.

F) Firm and Firm Registration

None

G) Difference between referral fee and kick back

Mr. Gilley advised the board there are companies out there that approach other survey companies and offer to allow them to get a contract for a fee, with first company being the middle man or broker. Mr. Gilley questioned whether this is a kick back and subject to board rule 663.9(a) also requiring full disclosure of that party's role. Mrs. Foster questioned whether it could be considered a commission. Mr. Smyth advised to leave it as it is and if you get a complaint look at each case one at a time. Mr. Price states this is more an ethical issue and maybe where the professional organization needs to step up and determine whether there is an ethics violation.

10. Committee Reports

A) Executive Committee - Greg Smyth; Chair

None

B) Rules Committee – Greg Smyth; Chair

1) Discussion, possible approval and vote to amend and or adopt amendments to Board Rule 661.47(b) - Reciprocal Registration

After taking public comments (none) the board considered this agenda item. Mr. Smyth called for a vote. Mr. Kwan made the motion. Mr. Garcia seconded. In discussion it was felt more time to review this was needed. Mr. Kwan motioned to postpone. Mr. Childress seconded. There was no further discussion. A vote to postpone was called. All were in favor (9 to 0) to postpone.

2) Discussion, possible approval and vote to adopt amendments to Board Rule 663.18(e) – Certifications

This item was placed on the agenda by accident and was not addressed.

3) Discussion, possible approval and vote to adopt amendments to Board Rule 661.41(b) – Applications

After taking public comments (none) the board considered this agenda item. Mr. Smyth called for a vote. Mrs. Foster made the motion. Mr. Kwan seconded. There was no discussion. A vote was called. All were in favor (9 to 0) to adopt.

4) Discussion, possible approval and vote to adopt amendments to Board Rule 661.55 - Firm Registrations

After taking public comments (none) the board considered this agenda item. Mr. Smyth called for a vote. Mr. Garcia made the motion. Mr. Hodde seconded. There was no discussion. A vote was called. All were in favor (9 to 0) to adopt amendments.

C) RPLS/SIT Examination Committee– Jon Hodde; Chair (Report on NCEES Zone Meeting & Computer Base Testing)

Mr. Hodde reported on the NCEES zone meeting held here in Austin on April 28, 2011. He advised the meeting was well attended. He next listed the new officers. He also advised that Virginia was voted into the southern zone. However, National would have to vote on it. He also discussed computerized testing of SIT's to begin in 2014. They are working on the item banks now. Mrs. Hodgson advised the agency was preparing for this. She has already attended a webinar on the topic.

Mr. Hodde advised there was a total of 48 test takers for the FS examination. 31 first time takers of which 15 passed (pass ratio 48.4%). There were 17 repeat test takers of which 3 passed (pass ratio of 17.6%). The overall pass ratio rate was 38%.

Mr. O'Hara motioned to certify the new SIT's. Mrs. Foster seconded. There was no discussion. All were in favor (9 to 0).

Mr. Hodde next laid out the statistics for those taking the RPLS examination.

	Test Takers	Passed	Pass Ratio
Legal	47	33	70%
Analytical	57	36	63%
Reciprocal	29	24	83%

Mr. Hodde made a motion to register all those who passed the legal, analytical, and reciprocal examinations. Mr. Kwan seconded. There was no discussion. All were in favor (9 to 0).

D) LSLS Examination Committee –Bill O'Hara; Chair

Mr. O'Hara advised that 6 candidates sat for the April 2011 exam and 2 successfully passed. Mr. McDow and Mr. Escobar were presented with their licenses.

E) Continuing Education Committee – Paul Kwan; Chair

Application for Course Approval: Voted on as a group, all in favor.

- Professional Ethics in Land Surveying. 4 hours
- Floodplain Management & the FEMA National Flood Insurance Program. 4 hours
- Geomatics and GIS. 4 hours
- Review: Land Survey Practices Act and Rules. 4 hours
- Utility Right-of-Way Law and Easements. 4 hours
- An Introduction to the New 2011 ALTA/ACSM Standards. 4 hours
- The 2011 ALTA/ACSM Standards-A Field Perspective. 4 hours
- Surveying in Public Land States. 4 hours
- Business Self Defense: Documenting the File. 4 hours
- Geodetic and Tidal Vertical Datums. 6 hours
- Ethics for the Land Surveyor. 4 hours
- The 4 P's of Running a Successful Business. 4 hours
- Creation and Termination of Easements and Rail-Banking. 2 hours
- Water Wars: Property Rights, Boundaries, Litigation and the Surveyor. 2 hours
- Digital Elevation Modeling. 8 hours
- Essentials of Contracts for Professional Surveyors. 4 hours

- Contracts and the Limitation of Professional Liability. 4 hours

Chapter Meeting Approval: Voted on as a group, all in favor.

- TSPS Government Affairs-Current Legislative Session (March 17, 2011). 1 hour
- History of the Spanish Land Grant to San Antonio (May 19, 2011) 1 hour

Individual Course Approval: Voted on as a group, all in Favor.

- Professional Practice & Board Update/Ethics. 1 hour
- OSHA-10 Hour Training. 10 hours
- Western Data Systems New Technology Showcase Open House. 2 hours
- Transportation Safety and Tort Liability. 8 hours
- Basic Safety Awareness Orientation. 8 hours
- McLaughlin Brunson Insurance 2011 Loss Prevention/Risk Management Seminar with 1 hour Ethics. 6.5 hours total (1 hour of ethics)

F) Highway Issues Committee– Vacant; Chair
Membership will be set at the next board meeting.

G) Oil Well Issues Committee – Jon Hodde; Chair
Mr. Hodde reported that things remain the same, activity in South Texas.

H) Legislative Needs Committee– Bill O’Hara; Chair
Mr. O’Hara addressed/discussed and recapped the Bill that affected the agency this past session. HB2480 filed by Geren, HB2543 filed by Smith, and HB3166 filed by Callegari all would have abolished and consolidated the agency/board. These Bills were filed early and never completed the full process. HB1147 relating to Geospatial Data products did pass. It was filed by Smith and was sponsored by TSPS.

I) Complaint Review Process Committee– Paul Kwan; Chair
Skipped

J) Task Force on registration of photogrammetrists, mappers and GIS Professionals - Nedra Foster; Chair
Mrs. Foster indicated that this committee circulated the rules from the 5 states that currently license this group, including GIS professionals. Thoughts to begin this process are presently working.

11. Correspondence and approval of return to Active status of Richard W. Carlson and Keith W. Wooley
After discussion, Mr. Price motioned to return both individuals to active status. Mr. Hodde seconded. There was no further discussion. A vote was called. All were in favor (9 to 0).

12. Other Business - Schedule Next Board Meeting

Mr. Gilley advised the board that he has received numerous calls from across the state from surveyors that claim a city or TXDOT are claiming surveyors are in violation of our rules if they don’t do “this or that”. Mr. Gilley went on to say only the board can interpret our board rules. Not a city, TXDOT, or anyone else. In this discussion, Mr. Gilley also brought up issue about easements are boundaries.

Mr. DiTucci advised he received a Memorandum of Agreement (MOA) from the Texas Board of Professional Geoscientists. It came in at a point in time that did not allow posting on the agenda and will be brought up at the next board meeting. Basically, it states that if we find any of their licensees in violation of their “Act or Rules”, we will inform them and they will do likewise. Mr. DiTucci also advised that this agreement could drive additional complaints.

The board decided that the next board meeting will be scheduled for September 16, 2011, at 9:00 a.m. at the same location as this meeting. Additionally at the next board meeting, the board needs to consider fees and a post card newsletter if they choose. That card can direct individuals to our website.

13. Floor open for Public Comments

The following individuals presented comments to the board;

Cecil Chisholm #4295- Inquired about continuing education for attending board meetings.

Deward Bowles #4966- Supports putting complaints online.

Michael Romans #4657- Addressed monumentation and easement issues.

Jerry Lehen #3897- Addressed easement issues.

David Hoskins #4789- Addressed easement issues.

C.B. Thomas #1503- Addressed education issues.

Todd Blenden #6186- Addressed preapproval of continuing education.

14. Adjournment

The board consented to adjourn at 12:13pm on June 17, 2011.

The Board may go into Executive Session on any of the foregoing agenda items if authorized by Chapter 551 of the Gov't Code.

To request ADA accommodations, contact Frank DiTucci at 512-239-5263 at least 5 working days prior to the meeting.

ATTEST: _____
Greg Smyth, Board Chair

Frank DiTucci, Executive Director